

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

CANDY N. WEBB,

Plaintiff,

v.

**CITY OF EUFAULA, a political
subdivision and municipality;
DON MURRAY; and SELINA
JAYNE-DORNAN.**

Defendants.

Case No. CIV-18-01-SPS

OPINION AND ORDER


This matter comes before the Court on motion by Defendants City of Eufaula, Don Murray, and Selina Jayne-Dornan for dismissal of the petition filed by the Plaintiff Candy N. Webb for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons set forth below, the Court finds that Defendant's Motion to Dismiss Plaintiff's Petition and Brief in Support [Docket No. 4] should be GRANTED.

The Plaintiff alleges that she was terminated from employment as a police officer for the City of Eufaula through wrongful actions of Murray (the police chief) and Jayne-Dorman (the mayor). She filed suit in the District Court of McIntosh County, Case No. CJ-17-46, asserting the following claims: (i) breach of contract by the City of Eufaula; (ii) malicious interference with a contractual relationship and intentional infliction of emotional distress by Murray and Jayne-Dornan; and, (iii) gender discrimination (under 42 U.S.C. §1983) by Murray. The Defendants removed the case to this Court on the basis of

the Section 1983 claim and now seek dismissal of the entire petition for failure to state a claim upon which relief can be granted.

The Court first addresses the Section 1983 claim, characterized by the Plaintiff as one for gender discrimination. The Defendants argue that such a claim is barred by limitations because: (i) the Plaintiff failed to file suit within ninety days of the issuance of a right to sue letter from the EEOC; and (ii) the failure to include the claim in a previous action voluntarily dismissed by the Plaintiff before but refiled in this action under the Oklahoma “saving statute,” 12 Okla. Stat. § 100. The Court finds these arguments by the Defendants unpersuasive, but is nevertheless convinced that the Plaintiff’s claim under Section 1983 is subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(6) for lack of any allegations as to gender discrimination. Although the Plaintiff does allege that she is a woman, she does not allege how any of the Defendants discriminated against her on that basis. Furthermore, because the Court’s jurisdiction is based upon this claim, the Court finds that the Plaintiff should be required to amend her petition before the merits of the remaining claim are addressed. Consequently, IT IS ORDERED that Defendant’s Motion to Dismiss Plaintiff’s Petition and Brief in Support [Docket No. 4] is GRANTED, and the Plaintiff shall have fourteen days to file an Amended Complaint.

DATED this 6th day of July, 2018.


Steven P. Shreder
United States Magistrate Judge
Eastern District of Oklahoma